

EXHIBIT B

to Big E's Statement of Undisputed Facts
in Support of Motion for Summary Judgment

Excerpts from the Deposition of Steve Sproles

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
3

4 -----)
5 GCC MOVING, LLC and GARY)
6 COOK d/b/a GCC MOVING)
7 Plaintiff)
8 vs.) C.A. NO. 1:16-cv-11538
9)
10 ESTES EXPRESS LINES, CORP.)
11 D/b/a, alias, BIG E.)
12 TRANSPORTATION; and BIG E)
13 TRANSPORTATION, LLC d/b/a,)
14 alias ESTES EXPRESS LINES;)
15 JOHN DOES 1-10, JANE DOES)
16 1-10 and XYZ CORPORATIONS)
17 1-10)
18 Defendants)
19 -----)

20 DEPOSITION OF STEVE SPROLES, a Witness in
21 the above-entitled case, taken on behalf of the
22 Plaintiff, before Patricia Quirk, CSR, Notary
23 Public in and for the State of Rhode Island, at
24 the offices of Brainsky Levinson, LLC, 1543 Fall
25 River Avenue, Suite 1, Seekonk, MA 02771, on
August 16, 2017, scheduled at 10:00 a.m.

PRESENT:

FOR THE PLAINTIFF....BRAINSKY LEVINSON, LLC
BY: MATTHEW I. SHAW, ESQUIRE

FOR THE DEFENDANT....SCOPELITIS GARVIN LIGHT HANSON &
FEARY
BY: JAMES T. SPOLYAR, ESQUIRE

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1 (DEPOSITION COMMENCED AT 10:08 a.m.)

2 STEVE SPROLES

3 The Deponent, having been satisfactorily
4 identified and duly sworn by the Notary Public,
5 deposes and testifies as follows:

6 EXAMINATION BY MR. SHAW

7 IT IS HEREBY STIPULATED AND AGREED, by
8 and between counsel for the respective parties,
9 that the witness will read and sign the deposition
10 transcript under the pains and penalties of
11 perjury; that the reading and signing is deemed
12 waived if not accomplished within thirty (30) days
13 of transcript delivery; and that the sealing,
14 filing, and certification of deposition transcript
15 are waived.

16 It is further stipulated and agreed that
17 all objections, except objections to the form of
18 the question and motions to strike, will be
19 reserved until the time of trial or pre-trial
20 hearing.

21 Q. Good morning, Mr. Sproles. My name is Matthew
22 Shaw, we just met a moment ago. I represent GCC
23 Moving and Gary Cook doing business as a GCC Moving
24 in a lawsuit that's been filed against Estes
25 Express Lines Corporation, Big E Transportation,

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1 It's very common for people to try and
2 speak over one another in a normal conversation.
3 We try and limit that with the stenographer taking
4 down everything that we're saying. So, with that
5 being said, any questions?

6 A. No.

7 Q. Okay. Mr. Sproles, it's my understanding that you
8 served as vice president of operations at Big E
9 Transportation; is that correct?

10 A. No, vice president of operations for Level 2
11 Logistics, which was a division of Estes Express
12 Lines.

13 Q. What is -- excuse me, I'll start again.

14 Level 2 Logistics, what is its
15 relationship to Big E Transportation?

16 MR. SPOLYAR: Object to the form of
17 the question, requiring legal conclusion, lacking
18 foundation.

19 A. Level 2 Logistics oversees the operations of
20 Big E Transportation via a service contract between
21 Big E Transportation and Estes Express Lines.

22 Q. Could you describe your responsibilities as vice
23 president with Level 2 Logistics?

24 A. I'm responsible for all day-to-day operations
25 of the company, as well as, all working with

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1 counsel on legal matters. That's it.

2 Q. Are you familiar with the relationship between Big
3 E and Estes?

4 MR. SPOLYAR: Object to the form of
5 the question as vague and lacking foundation. Go
6 ahead.

7 A. I just explained that Level 2 Logistics is a
8 division of Estes, so that is the relationship that
9 I explained.

10 Q. What is Big E's relationship to Level 2 Logistics?

11 A. Level 2 Logistics manages the operations of
12 Big E Transportation via a service contract between
13 the two corporations.

14 Q. I'm trying to determine whether Level 2 is a
15 separate company, or if it's part of Big E, can you
16 answer that?

17 MR. SPOLYAR: Object to the form of
18 the question as vague and requiring a legal
19 conclusion. Go ahead.

20 A. Level 2 Logistics is a division of Estes
21 Express.

22 Q. And it's part of Big E Transportation?

23 A. Big E Transportation is a wholly-owned
24 subsidiary of Estes Express Line.

25 Q. And you work for Level 2?

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1 A. Uh-huh.

2 Q. And they didn't have any issues on the driving
3 record or safety issues; is that correct?

4 MR. SPOLYAR: Object to the form of
5 the question as mischaracterizing the witness'
6 testimony. Go ahead.

7 Q. Is that correct?

8 MR. SPOLYAR: Go ahead and answer.

9 A. I think I feel more comfortable answering the
10 previous question again.

11 Q. Okay, and that question has long passed.

12 I think -- all right, let me -- I'm going
13 to show you a document and ask if you recognize
14 this? That might be easier.

15 A. Yes, I recognize that.

16 Q. What is that?

17 A. It's a worksheet that our managers would use
18 when trying to see if a potential contractor is
19 qualified.

20 Q. And when you say, "manager," would that have been
21 Mike Rail in 2012?

22 A. Yes.

23 Q. And I'm sorry, I don't have copies of this.

24 I looked over the application for
25 employment, what type of inquiry to a previous

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1 employer was made?

2 A. DOT requires that we do a previous employment
3 check for the last three years for anybody that's
4 operating under Big E's DOT.

5 Q. Is that a Big E requirement?

6 A. It's a DOT requirement.

7 Q. Independent of Big E's requirement, that's solely a
8 federal requirement?

9 A. That's correct.

10 Q. Okay. Another box checked here, is annual driver
11 certification of violations, and you testified
12 briefly to that, is that a federal requirement or
13 is that a Big E requirement?

14 MR. SPOLYAR: Object to the form of
15 the question, requiring a legal conclusion. Go
16 ahead.

17 A. It's a federal requirement.

18 Q. And if you know, can you briefly describe for me
19 what a driver's certification of violations is?

20 A. It's a document, FMCSA document, where the
21 driver lists any -- he fills out the document and
22 lists any violations he has on his driving record
23 in the last 12 months and signs certifying it.

24 Q. Is that crosschecked, do you know, by Big E with
25 any state or municipal authority?

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1 A. Big E also gets a copy of abstract or MVR;
2 motor vehicle records.

3 Q. Together with this, with the certification?

4 A. That's correct, a certification is required
5 annually.

6 Q. Is a motor vehicle report from -- do you know, if a
7 motor vehicle report from a municipal or state
8 authority is required, if at all?

9 A. That's what I was referring to is a motor
10 vehicle record, yes.

11 Q. But is that a Big E requirement, or is that a
12 federal requirement?

13 MR. SPOLYAR: Objection: legal
14 conclusion. Go ahead.

15 A. Federal requirement.

16 Q. Could you -- the next line is a driver's road test
17 certificate or equivalent, can you describe for me
18 what that is?

19 A. It's another federal requirement that you have
20 to maintain. There has to be in the driver's file
21 certifying that he has been tested and that you
22 know he can operate the vehicle safely.

23 Q. Do you know what type of test that usually entails?
24 Is it a number of hours performed, or is it a
25 skills test?

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1 A. It can be an actual ride along with the
2 driver, or we can just take the endorsement on his
3 license as proof that he can operate.

4 Q. Now, this qualification file checklist has a number
5 of items on it, do you know if they all need to be
6 checked off for an agent to be qualified?

7 A. May I see it?

8 Q. Yes.

9 MR. SPOLYAR: I'm going to object to
10 the form of the question as a legal conclusion.
11 Take your time, go ahead, and read it.

12 A. Could you ask the question again, please?

13 (QUESTION READ BACK)

14 A. This checklist is for a manager to be sure
15 he's collected all the things to be in the driver
16 qualification file, it's a federal document. All
17 things on here are required by FMCSA to be in the
18 driver qualification file. This is also after
19 we've come to an agreement on a contract.

20 Q. Okay, that's post contract?

21 A. That's correct.

22 Q. Okay. Thank you. You wouldn't even get to this
23 until you've -- you and the agent have come to
24 terms on the contract?

25 A. That's correct.

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1 Q. Are you familiar with the hiring of an employee
2 driver by Big E?

3 MR. SPOLYAR: Object to the form of
4 the question as lacking in foundation. Go ahead.

5 A. Big E has never had employee drivers.

6 Q. Do you know if Estes Express has employee drivers?

7 A. Yes, they do.

8 Q. We discussed this, but you don't know how many?

9 A. It's a fluid number.

10 Q. So going back to the attention of contractors.

11 Once an application is filled out, and the various
12 information is sought by Big E, what's next?

13 A. Please repeat that, I'm sorry.

14 Q. I'm trying to go through the steps of the process
15 of pertaining an agent, so if I've missed one,
16 you'll have to correct me.

17 But as I understand it, Big E makes it
18 known that they need services of an agent. A
19 potential agent will make an inquiry, that will
20 prompt some sort of meeting, telephone call, or
21 otherwise, between a potential agent, Big E, a
22 manager or somebody over at Big E. That meeting
23 will involve obtaining some information from a
24 potential agent. Some of that information is
25 included in the driver qualification file

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1 Q. -- Exhibit 2. I have an Attachment A as the
2 contractor payment rates. I have Supplement 1 to
3 Attachment A, Supplement 2 to Attachment A. I have
4 Attachment B, contractor election form; and I have
5 Attachment D, equipment list; and then I have a
6 statement of lease?

7 A. Yes.

8 Q. These are included as attachments to Exhibit 2.
9 Are these the types of attachments that are typical
10 to other contracts with other agents?

11 A. Yes.

12 Q. Are these types of -- are these attachments the
13 type that would be negotiated between Big E and a
14 potential agent?

15 MR. SPOLYAR: Objection. Go ahead.

16 A. Attachment A could be negotiated.

17 Q. How about Attachment B?

18 A. No.

19 Q. But it looks like Attachment B could be filled out
20 in a variety of ways by different potential agents;
21 is that correct?

22 A. It's an election form, yes.

23 Q. Attachment D is an equipment list?

24 A. Correct.

25 Q. And I'm sure each potential agent comes with

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1 MR. SPOLYAR: Objection: Vague. Go
2 ahead.

3 A. Yes.

4 Q. Okay. So once the parties -- once Big E and a
5 potential agent come to terms on the contract, what
6 happens next? The contract is executed and the
7 parties are ready to -- ready to perform. What
8 happens next?

9 A. The contractor, again, is provided services as
10 needed.

11 Q. Does the contractor bring to the agreement any
12 equipment, typically, or does that change on a
13 contractor-by-contractor basis?

14 A. The contractor always brings his own
15 equipment.

16 Q. Can you describe that equipment, like what it is?

17 A. That would be the power unit, and tools
18 needed.

19 Q. What do you mean by power unit?

20 A. It can be a straight truck, it can be a
21 tractor.

22 Q. Beside the power unit or the tools, what else does
23 a typical agent bring in terms of equipment?

24 A. That's all.

25 Q. That's all, okay. Is there any training that's

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1 involved?

2 MR. SPOLYAR: Object to the form of
3 the question, that's vague. Go ahead.

4 A. The contractor, his employees, are shown how
5 to do the paperwork, and for whatever customer it
6 is, and -- if you call that training. Could I
7 clarify that a bit?

8 Q. Yes.

9 A. Different customers have different
10 requirements, so they are shared -- the customer
11 requirements for where they are providing the
12 services.

13 Q. When you talk about customers, are you talking
14 about, like, a single individual? Are you talking
15 about a business? Can you clarify what you mean by
16 "customer"?

17 A. It would be a business.

18 Q. Okay. I'm going to clarify because I'm not sure I
19 understand.

20 If an agent is retained as a contractor
21 for a customer, is this a one-time job, or is it a
22 job that goes over a period of time or -- what's,
23 generally, the scope of a contract?

24 MR. SPOLYAR: Objection: vague and
25 compound. Go ahead.

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1 A. Generally, it would be for a period of time;
2 contracts are one year with an extension. There's
3 not any one-time fix.

4 Q. Excuse me, you mentioned it in terms of providing
5 services for a customer. I don't think Big E would
6 hire an agent for one person or one business to do
7 one job, that's not how it works, is it?

8 A. It isn't, that's correct.

9 Q. It's a contract to provide services for a period of
10 a year, you say?

11 A. That's the initial term of the contract,
12 correct.

13 Q. And could that -- would that be to provide whatever
14 services Big E needs during that duration?

15 MR. SPOLYAR: Objection: vague. Go
16 ahead.

17 A. Big E would present the contractor with their
18 needs, and the contractor can decide whether or not
19 to accept their work.

20 Q. Those needs, what are they typically? Are they
21 typically small job needs? Are the needs fairly
22 consistent? What types of employment or work can a
23 contractor expect?

24 MR. SPOLYAR: Objection: vague. Go
25 ahead.

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1 A. Usually it's final-mile deliveries to end
2 customers or deliveries to businesses, distribution
3 centers, things like that, or retail outlets.

4 Q. How consistent is the workload? Is it an every day
5 type of workload, or is it sporadic?

6 MR. SPOLYAR: Objection: vague,
7 speculation. Go ahead.

8 A. It's generally every day; five days a week,
9 sometimes six days a week.

10 Q. In terms of training, you testified that Big E
11 would review paperwork with the agent contractor
12 and the customers' needs?

13 MR. SPOLYAR: Object to the form of
14 the question as mischaracterizing the witness'
15 testimony.

16 A. Customer requirements.

17 Q. What does that typically involve in terms of
18 paperwork and customer requirements?

19 A. It's typically a proof of delivery document
20 that the customer signs, the contractor notes any
21 services provided.

22 Q. Does Big E have any employment policies or an
23 employee handbook that agents are required to
24 adhere to?

25 MR. SPOLYAR: Object to the form of

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1 the question as vague.

2 A. No, we don't have any employees.

3 Q. So Big E doesn't have any employees working for it?

4 A. That's correct.

5 Q. They are a fully -- full contractor agent
6 operation?

7 A. That's correct.

8 Q. What's the hierarchy of Big E in terms of delivery
9 drivers or agents up the chain?

10 MR. SPOLYAR: Objection: vague. Go
11 ahead.

12 A. Big E is managed through a service contract
13 between Big E and Estes Express.

14 Q. Do you know who manages the contract on the Big E
15 side?

16 MR. SPOLYAR: Objection: vague. Go
17 ahead.

18 A. I'm responsible for the day-to-day operations,
19 managing day-to-day operations of Big E through a
20 service contract.

21 Q. And what does that involve?

22 A. It involves day-to-day operation nationwide.

23 Q. That seems like it's a big task. You work out of
24 Richmond, Virginia and Big E's up here, and you do
25 this nationwide. Can you tell me what your

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1 at Big E in Seekonk?

2 A. Keith Davis oversees several local managers,
3 but there is no local manager in Seekonk.

4 Q. How many local managers does he oversee?

5 A. I don't know the exact number, but it's around
6 six.

7 Q. And it's your testimony that there's no local
8 manager at Seekonk?

9 A. That's correct.

10 Q. Has there ever been a local manager at Seekonk?

11 A. Nope.

12 Q. So how is it that drivers get their assignments in
13 Seekonk?

14 MR. SPOLYAR: Object to the form of
15 the question as lacking foundation,
16 mischaracterizing testimony. Go ahead.

17 A. Drivers get their assignments from whoever
18 they work for. In this case, it would have been
19 Gary Cook.

20 Q. And how did Gary Cook get his assignments?

21 MR. SPOLYAR: Objection:
22 mischaracterizes testimony. Go ahead.

23 A. Michael Rail would have told Gary Cook where
24 we need trucks, and he would decide whether he
25 wanted to put trucks there or not.

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1 Q. Michael Rail was -- at the time, 2012, 2015, was he
2 an agent for Big E or was he an employee?

3 MR. SPOLYAR: Objection: legal
4 conclusion.

5 A. He was an employee of Estes Express Lines.

6 Q. Does Estes Express Lines have any other employees
7 that work at Big E?

8 A. I have other employees that manage Big E's
9 operations, yes.

10 Q. Where are those employees located, geographically?

11 A. Some would be Dallas, Texas; St. Louis,
12 Missouri; Los Angeles, California; York, Pennsylvania;
13 North Bergen, New Jersey; Atlanta, Georgia.

14 Q. Estes Express Lines doesn't have any employee
15 that's located out of the Big E in Seekonk?

16 A. Say that again, please?

17 Q. Does Estes Express have an employee that works out
18 of the Seekonk terminal?

19 A. Everybody at the Seekonk terminal is an Estes
20 employee.

21 Q. So over at Seekonk, you've got Estes Express --

22 A. Right.

23 Q. -- and Big E?

24 MR. SPOLYAR: Objection: vague. Go
25 ahead.

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1 Q. Change, okay, okay. In terms of vacation time,
2 sick time, do agents of -- agents or contractors of
3 Big E typically receive those types of benefits?

4 MR. SPOLYAR: Objection: vague. Go
5 ahead.

6 A. They don't receive them from Big E.

7 Q. If they were to receive them, how would they
8 receive them or from whom would they receive them?

9 MR. SPOLYAR: Objection: lacks
10 foundation. Go ahead.

11 A. I wouldn't know.

12 Q. Outside of the regulations that you -- that we
13 discussed in the checklist, and I'll show this to
14 you again to use as reference. Aside from the
15 regulations that you pointed to in that checklist,
16 are there any other policies of Big E that
17 contractor, agents -- contractor, agent drivers
18 have to adhere to?

19 MR. SPOLYAR: Objection: vague. Go
20 ahead.

21 A. If contractor is operating under Big E's DOT
22 authority, they have to adhere to drug and alcohol
23 policies.

24 Q. Are those drug and alcohol policies established by
25 regulation or by Big E policy?

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1 A. They are a federal requirement.

2 Q. In negotiating a contract or discussing a contract
3 with a particular agent, a contract driver in
4 discussing this checklist with a potential agent,
5 contractor, drivers, are those drivers provided
6 copies of DOT regulations, federal regulations?

7 MR. SPOLYAR: I'm going to object to
8 the form of the question as vague, and I think we
9 need to clarify something. Can we go off the
10 record for a moment?

11 (OFF THE RECORD)

12 (RECESS TAKEN AT 12:03 p.m.)

13 MR. SHAW: I want to mark as
14 Exhibit 5 a driver qualification file checklist we
15 referred to on and off.

16 (SPROLES EXHIBIT 5 MARKED)

17 Q. Let's clarify some of our conversation so we're on
18 the same page, and obviously, feel free to jump in.

19 We've been talking about agent
20 contractors who are, I'm going to say, parties to
21 Big E Transportation independent contractor
22 operating agreement. I've been using the term
23 agent and contractor as one in the same, and I've
24 been discussing those individuals in terms of
25 driving services provided for Big E. So I just

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1 want to clarify that, if you have anything further?

2 MR. SPOLYAR: No, if you want to ask
3 him a question to clarify his understanding of what
4 you are asking, I think that would be good.

5 Q. I will. Does Big E have an independent contractor
6 operating agreement with agents and contractors to
7 perform driving services; is that correct?

8 A. Yes.

9 Q. Do they maintain other similar independent
10 contractor operating agreements to provide other
11 types of services?

12 A. No. And to clarify, the agent, contractor
13 terms within our organization, they both sign an
14 operating agreement.

15 An agent operates under his own operating
16 authority; therefore, Exhibit 5 isn't required by
17 us. A contractor operates under Big E's authority;
18 therefore, all the FMCSA requirements apply.

19 I don't know if that's the way other
20 people would define it, but our office defines it
21 that way to distinguish between the two
22 requirements.

23 Q. I'll get to that and that's a good distinction, and
24 that's a distinction that we are going to get to
25 further on.

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1 For example, and as it relates to this
2 case, GCC Moving is a party -- is a contractor
3 under this independent contractor operating
4 agreement, but GCC Moving also serves as an agent
5 and has drivers working for it; is that accurate?

6 A. Not really. A contractor can have -- just
7 drive himself, or a contractor can have multiple
8 drivers. An agent can do the same thing.

9 The difference is, in our organization,
10 an agent is operating under their own DOT
11 authority, and a contractor is operating under Big
12 E's DOT authority. We employ agents and
13 contractors for the same types of work, so --

14 Q. And when you say, "operation under DOT authority,"
15 would an agent have its own -- I don't even know
16 how to describe it, their own DOT authorization?

17 A. Yes, their own DOT authority.

18 Q. Permits and they've met independent certain DOT
19 requirements?

20 A. That's correct.

21 Q. Apart from, say Big E, and a contractor would be
22 operating under Big E's DOT authorization and
23 licensure or permitting. I don't know how to
24 describe it, but is that accurate?

25 A. Yes.

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1 of Estes Express?

2 MR. SPOLYAR: Objection: vague,
3 lacking foundation. Go ahead.

4 A. No.

5 Q. Why is that, do you know?

6 MR. SPOLYAR: Same objection.

7 A. All the insurances are maintained by Estes
8 Express for employees.

9 Q. And with respect to registration of vehicles and --
10 would Estes Express employees have to bear the cost
11 of that, or would that be borne by Estes Express?

12 MR. SPOLYAR: Objection:
13 foundation, calls for a legal conclusion.

14 A. It would be borne by Estes Express.

15 Q. And same with maintenance of the vehicle?

16 MR. SPOLYAR: Same objection.

17 A. Estes Express pays for the maintenance of the
18 vehicle.

19 Q. With respect to operating cost of vehicles for
20 contractor drivers, who maintains those costs?

21 MR. SPOLYAR: Objection to the form
22 of the question as vague on the term "contractor
23 driver." Go ahead -- and also requires a legal
24 conclusion.

25 A. The contractor is responsible for all the

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1 costs to maintain his equipment.

2 Q. I want to turn your attention to Section 7A of the
3 contract. Section 7A provides, "The contractor
4 shall provide contractor and/or other competent
5 professional drivers who meet carrier's minimum
6 driver qualification standards and all requirements
7 of the DOT."

8 Is there an expectation on the part of
9 the contractor to provide additional drivers under
10 the contract?

11 MR. SPOLYAR: Objection: vague,
12 calls for speculation. Go ahead.

13 A. I'm hung up on the word "expectation," could
14 you rephrase?

15 Q. Well, that's -- I was looking for an explanation of
16 that provision because it would imply that drivers
17 who are parties to this contract would go out and
18 recruit additional drivers to either work for them
19 or work for Big E. So I was wondering if you could
20 explain that or explain how that works?

21 MR. SPOLYAR: Objection to the form
22 of the question as mischaracterizing the exhibit,
23 calls for speculation. Go ahead.

24 MR. SHAW: That's why I'm asking you
25 to explain it.

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1 A. The contractor determines who is going to
2 drive his vehicles, and if we have the need for
3 multiple vehicles, how many he would want to
4 provide, that's totally up to him.

5 If we had a need for five trucks and he
6 wanted to put two on, he could put two on and we
7 would get the other three somewhere else.

8 We would never recruit people on behalf
9 of Big E. He would be recruiting people on his
10 behalf.

11 Q. Okay, so at that point in time -- so, say, for
12 example, Big E has a need for five vehicles and a
13 driver signs this contract to come on as a
14 contractor and perform driving services, delivery
15 services, and he's got one truck, can he bring on
16 other drivers who each have their own truck to fill
17 the other four spots? Does that make sense?

18 MR. SPOLYAR: Objection: vague. Go
19 ahead.

20 A. If you're -- by bringing on -- if he wanted to
21 have them work and pay them, it's his decision if
22 they have their own truck or not.

23 Q. That's the decision of the driver?

24 A. Of the contractor.

25 Q. Of the contractor, I'm sorry. So, could you

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1 explain how that process works in terms of
2 compensation and actually performing services for
3 Big E? So if, for instance, and we'll refer to
4 this more specifically later on, but if Gary Cook
5 executes the independent operator contracting --
6 independent contractor operating agreement, and
7 he's providing services for Big E, how is it that
8 he can -- is it possible for him to bring or have
9 other drivers work for him in providing services
10 for Big E, or is he providing those drivers to
11 perform services on his behalf for Big E?

12 MR. SPOLYAR: Objection:
13 foundation, calls for legal conclusion.

14 A. That's a very unclear question.

15 Q. I'm trying to figure out and maybe if you could
16 just explain, in a little bit more detail, how is
17 it that other drivers come to perform services
18 under this agreement and that work is performed?

19 A. A contractor has a business, he can hire as
20 many drivers and buy as many trucks or rent as many
21 trucks as he wants to. That has nothing to do with
22 Big E.

23 If Big E has a need and we have a
24 relationship with the contractor, and Big E has a
25 need for multiple trucks, he can provide them based

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1 on the contract, he doesn't have to.

2 Q. In this case, Gary Cook provided additional
3 drivers; is that correct?

4 A. That's correct.

5 Q. And those drivers were ultimately providing
6 services for Big E, correct?

7 MR. SPOLYAR: Objection to the form
8 of the question as requiring a legal conclusion and
9 vague. Go ahead.

10 A. I would say they were providing services for
11 Gary Cook, and Gary Cook was providing services for
12 Big E.

13 Q. So in this situation, Gary Cook would have gotten
14 assignments or delivery instructions --
15 assignments, for lack of a better word, and then he
16 would have instructed drivers to do that work for
17 him?

18 MR. SPOLYAR: Objection: vague on
19 assignments, but go ahead.

20 A. I was going to say assignments are very vague.
21 He would know which locations. He would be told
22 which locations needed a driver and a truck, and he
23 would decide who he would send to cover that work.

24 Q. Is there any relationship between these other
25 drivers and Big E, or is the relationship primarily

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1 between these other drivers, these secondary
2 drivers, for lack of a better term, and the
3 contractor who is a party to the agreement?

4 A. Big E has no relationship with those drivers.

5 Q. The contract just allows contractors to hire
6 drivers?

7 A. That's correct.

8 Q. And it allows contractors to hire drivers, for lack
9 of a better term, to perform services for it, the
10 contractor?

11 A. Correct.

12 Q. Ultimately, those services are for the benefit of
13 Big E though; is that correct?

14 MR. SPOLYAR: Objection: vague,
15 legal conclusion, lacks foundation. Go ahead.

16 A. Are you speaking specifically of the GCC
17 relationship?

18 Q. No, generally speaking?

19 A. Yeah, correct.

20 Q. In terms of contractors who drive and deliver, is
21 it a common practice to hire additional drivers?
22 Is it common in the industry? Is it common for
23 Estes?

24 MR. SPOLYAR: Objection. We're
25 asking on behalf of -- you are asking as to this

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1 if that contractor was contracted to operate under
2 Big E authority, those drivers that would be
3 driving would also have Big E's authority on it.

4 Q. Do those drivers, secondary drivers, bring to the
5 contractor, or Big E, their own equipment, or are
6 they using the contractor's equipment?

7 MR. SPOLYAR: Object to the form of
8 the question as lacking in foundation as to Big E.
9 Go ahead.

10 A. It's between the contractor and his employees.

11 Q. Okay. So it could be that a contractor has
12 multiple trucks to use and he allows a secondary
13 driver to use the truck?

14 A. Correct.

15 Q. Or it could be that these drivers have trucks and
16 they want to work for the contractor?

17 A. It's possible.

18 Q. Okay. I'm just trying to figure out various
19 scenarios. Okay, all right.

20 With respect to the secondary drivers, is
21 there any process by which Big E would vet them or
22 establish their minimum qualifications?

23 A. The federal government establishes minimum
24 qualifications, and if they are operating under Big
25 E's operating authority, then Big E has to maintain

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1 the records, as in Exhibit 5, for those drivers.

2 Q. So even for secondary drivers, Big E has to make
3 sure that they meet minimum federal guidelines?

4 A. If they are operating under Big E's authority,
5 yes.

6 Q. Okay. I want to turn to Section 8G of the
7 contract.

8 A. 8G. Okay.

9 Q. And I want to take a look at 8G1 and review it, and
10 then I've got a couple of questions about that
11 section.

12 A. Okay.

13 Q. Is there a similar requirement for employee drivers
14 of Estes Express?

15 MR. SPOLYAR: Objection: lacks
16 foundation. Go ahead.

17 A. I'm not sure of the policy of Estes Express.

18 Q. Okay. Section 8G1 would appear to require that
19 contractors maintain a mobile phone. Is that an
20 accurate summary?

21 MR. SPOLYAR: Objection: Calls for
22 a legal conclusion. Go ahead.

23 A. Yes.

24 Q. What's the purpose of that policy?

25 MR. SPOLYAR: Objection:

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1 foundation, speculation. Go ahead.

2 A. 8G1 states purpose for safety and customer
3 service.

4 Q. Is that required by any federal regulation, do you
5 know?

6 MR. SPOLYAR: Objection: legal
7 conclusion. Go ahead.

8 A. Not that I'm aware of.

9 Q. What I'm getting at is that a provision or a
10 requirement that Big E requires on its own,
11 notwithstanding any law or regulation?

12 MR. SPOLYAR: Same objection: Legal
13 conclusion. Go ahead.

14 A. Yes.

15 Q. And that's for, you said safety and customer
16 service?

17 A. Correct.

18 Q. And what aspects of customer service?

19 A. If there was an issue with customer delivery,
20 the driver can contact his dispatcher to relay any
21 issues that he's having as far as customer service
22 goes.

23 Also, it's good practice to and we
24 recommend that they call the customer before they
25 arrive and ask for any special instructions that

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1 they may need.

2 Q. And it's typically on a mobile phone that's
3 maintained by the contractor?

4 A. Yes.

5 Q. Big E doesn't provide any type of telephone service
6 or dispatch radio on its trucks?

7 A. No.

8 Q. Go down to 8G2. 8G2 describes an electronic
9 onboard recorder. It also talks about compliance
10 with FMCSA. Can you describe how the two relate?

11 MR. SPOLYAR: Objection: vague. Go
12 ahead.

13 A. FMCSA requires hours of service documentation
14 on drivers and electronic onboard recorders. It's
15 a relatively new technology that does that
16 electronically instead of the driver manually
17 filling out a paper log.

18 Q. Does that track routes and miles?

19 MR. SPOLYAR: Objection: vague. Go
20 ahead.

21 A. I wouldn't say routes, it tracks miles and
22 hours of service.

23 Q. It refers to FMCSA?

24 A. Uh-huh.

25 Q. Do you know if Estes Express trucks have similar

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1 recorders?

2 A. Estes Express has electronic onboard recorders
3 on all of the trucks. In fact, as of December of
4 this year, all motor carriers have to have it.

5 Local deliveries and box trucks this
6 doesn't apply, they were never in Gary Cook's
7 trucks.

8 Q. Okay. So in what -- that's a distinction I want to
9 make. In what trucks or in what equipment are
10 these recorders required, and what equipment are
11 they not?

12 MR. SPOLYAR: Objection to the form
13 of the question. It's requiring a legal
14 conclusion. Go ahead.

15 A. FMCSA exemptions from the rule, without saying
16 I'm 100 percent accurate, a driver that operates
17 within a hundred air-mile radius and starts and
18 stops at the same place every day is not required
19 to keep them up, they keep a timesheet.

20 Q. Okay, fair enough. Section 8H refers to uniforms?

21 A. Uh-huh.

22 Q. Now, what's the purpose of that policy for a
23 contractor?

24 MR. SPOLYAR: Object to the form of
25 the question as vague, lacking in foundation. Go

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1 ahead.

2 A. So most of our customers have this requirement
3 for security reasons because we're delivering
4 inside people's homes. So we want to make sure
5 that our customers -- we want to make sure for
6 security reasons that the customers are comfortable
7 with those people and are properly identified
8 before they let them in their homes.

9 Q. Does Big E provide those uniforms or does the
10 contractor provide those uniforms?

11 MR. SPOYLAR: Objection as to vague.

12 A. The contractor provides those uniforms, Big E
13 does have some contractor shirts which they can
14 purchase, if they want to, they can.

15 Q. Again, this uniform provision, that's a policy of
16 Big E, that's absent of any federal regulation?

17 A. Right. That's correct.

18 Q. Now, we did discuss early on about medical and
19 alcohol and drug testing. We're back to Section
20 7B, which speaks to medical examinations. Is that
21 a requirement to comply with federal regulation or
22 is that a requirement to -- is that a requirement
23 that's just a Big E policy?

24 A. Federal regulation.

25 Q. And are Estes Express employees subject to the same

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1 medical examination?

2 MR. SPOLYAR: Objection: legal
3 conclusion. Go ahead.

4 A. Anybody that drives a commercial motor vehicle
5 is, so, yes.

6 Q. Same with the alcohol, drug, and alcohol testing,
7 it looks to be -- to fulfill a federal regulation;
8 is that correct?

9 A. That's correct.

10 Q. And would Estes Express drivers be subject to the
11 same requirement?

12 MR. SPOYLAR: Objection:
13 foundation, subject to legal conclusion. Go ahead.

14 A. Yes.

15 Q. I want to jump forward to Section 15B. If you
16 could just review 15B for me. I have a couple of
17 questions.

18 A. Okay.

19 Q. Correct me if I'm wrong, but Section 15B looks to
20 speak to the identification of the contractor's
21 equipment, whether it's the truck, the power unit
22 you described, or other equipment; is that
23 accurate?

24 A. Yes.

25 Q. My questions are: With respect to Big E, what type

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1 of identification is required, and how is it placed
2 on the equipment?

3 MR. SPOLYAR: Objection: compound
4 question, calls for a legal conclusion. Go ahead.

5 A. The only identification that's required by
6 Big E to be on the equipment is what's required by
7 the Federal Motor Carrier Safety Administration.
8 That is the name of the company, whose operating
9 authority, and DOT number, that's applied with a
10 decal.

11 Q. A decal?

12 A. Yes.

13 Q. So that's not a Big E requirement, that's an actual
14 requirement provided by federal regulation?

15 MR. SPOLYAR: Objection: Calls for
16 a conclusion.

17 A. That's correct.

18 Q. Okay, now I want to talk about Gary Cook's
19 contractual relationship with Big E. Turning your
20 attention to Exhibit 3. Now that I have a basic
21 understanding of the contract, Exhibit 3 is a
22 contract between Big E and who?

23 MR. SPOLYAR: I object to the form
24 of the question as requiring a legal conclusion.
25 Go ahead.

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1 required or provided by Big E during his contract
2 time?

3 A. I don't know.

4 Q. Do you know the manner in which Gary Cook's
5 equipment was branded or identified during the
6 contract time?

7 MR. SPOLYAR: Object to the form of
8 the question as vague. Go ahead.

9 A. Any equipment operating under any authority
10 would have been identified with the federal
11 required regulations.

12 Q. Do you know if that happened?

13 A. I don't know that for a fact.

14 Q. Section 18 of the contract talks about alternative
15 uses of the equipment?

16 A. Uh-huh.

17 Q. In some -- I think this section provides that the
18 contractors can't use the equipment for another
19 carrier but for written permission from Big E; is
20 that correct?

21 MR. SPOLYAR: Object to the form of
22 the question as mischaracterizing the exhibit,
23 requiring a legal conclusion. Go ahead.

24 A. That's correct.

25 Q. Do you know if Gary Cook ever sought to use the

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1 equipment for another carrier?

2 A. I don't know.

3 Q. Is that provision standard in the industry?

4 MR. SPOLYAR: Objection: vague,
5 lacks foundation. Go ahead.

6 A. Like it states, it's a Federal Motor Carrier
7 Administration requirement.

8 Q. So it's fairly standard?

9 A. It's a federal requirement.

10 Q. Do you know, is it -- do you know how common the
11 practice is for contractors to use equipment for
12 various carriers?

13 MR. SPOLYAR: Objection: vague. Go
14 ahead.

15 A. It's very common.

16 Q. Okay.

17 A. Uh-huh.

18 Q. Do you know if any of Big E -- any of Big E's
19 contractors used the equipment for other carriers?

20 A. Any?

21 Q. Yeah, any?

22 A. Yeah, there's been Big E contractors that use
23 equipment.

24 Q. Do you know who they used it for?

25 A. No.

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1 Q. Do you know the name of the contractors?

2 A. No, not off the top of my head, no.

3 Q. But it's occurred?

4 A. Yes.

5 Q. All right. This contract was signed by -- it looks
6 to be on or about March 2012. Do you know when the
7 contract terminated?

8 A. I do not.

9 Q. Do you know why it terminated?

10 A. There was a decrease in the amount of business
11 and the number of trucks that was needed in the
12 area.

13 Q. All right. Regardless, it looks like a second
14 contract was entered in January of 2015 and
15 that's --

16 A. Could I correct that?

17 Q. Yes.

18 A. These two exhibits are confusing. The first
19 one was terminated because we signed the new one.

20 Q. Okay, all right. What was the purpose of moving to
21 an entirely new agreement?

22 A. That's when GCC Moving started running their
23 own DOT authority.

24 Q. And it looks like they now are referring to
25 Exhibit 2. It looks like the equipment changed as

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1 THE WITNESS: Thank you.

2 Q. Do you have any knowledge as to the day-to-day
3 driving and delivery operations of Big E and how
4 those are performed?

5 MR. SPOLYAR: Objection: vague. Go
6 ahead.

7 A. Yes.

8 Q. Okay. We've discussed it generally, but I wanted
9 to get more into specifics. And I want to walk
10 through it at an excruciatingly slow pace.

11 So with respect to GCC Moving, GCC Moving
12 is retained by Big E as a contractor to provide
13 delivery services. What happens next?

14 A. Well, we would have communicated with GCC
15 Moving, which terminals needed the service, needed
16 trucks, and he would dispatch his trucks.

17 Q. And if he didn't have any secondary drivers working
18 for him, would he report to that terminal himself?

19 A. Yes.

20 Q. What would he do then?

21 A. He would communicate with the terminal to see
22 what deliveries they wanted him to do.

23 Q. Let me backup. Who would tell him what terminal to
24 go to?

25 MR. SPOLYAR: Object to the form of

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1 the question, requires speculation. Go ahead.

2 A. At this point in time, it would have been
3 Michael Rail.

4 Q. So Gary Cook has been retained, GCC Moving has been
5 retained as a contractor, he is instructed by, at
6 the time, 2012, to go to a specific terminal by
7 Michael Rail?

8 MR. SPOLYAR: Mischaracterizes
9 testimony. Go ahead.

10 A. Yes.

11 Q. Yes?

12 A. Yes.

13 Q. And once GCC Moving gets to the terminal, what
14 happens next?

15 MR. SPOLYAR: Objection:
16 speculation. Go ahead.

17 A. The terminal would present him with a list of
18 deliveries they would like him to do.

19 Q. Is there a specific individual at the terminal that
20 would do that?

21 A. I don't know enough about terminal operations
22 to answer that.

23 Q. Is it typically a body there or someone who would
24 do that?

25 A. Typically the dispatch office would do that.

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1 Q. Is the dispatch office located at the terminal?

2 A. Yes.

3 Q. Okay, all right. So they present -- what do they
4 present to him?

5 A. A list of deliveries they would like for him
6 to execute.

7 Q. And at that point in time, what happens, is the
8 truck loaded or?

9 A. Well, he would either accept or refuse -- he
10 would accept the deliveries he wanted to take or
11 refuse any he didn't want to take, and they would
12 tell him which door to go to, put his truck in and
13 then he would load his own truck.

14 Q. He would load his own truck, okay. Is there any
15 specific -- strike that.

16 If he accepts to do the deliveries, is
17 there any particular order in which he has to load
18 his truck?

19 A. No. That's completely up to him how he loads
20 his truck.

21 Q. And then is he given any paperwork? Once the truck
22 is loaded, what happens next?

23 A. He would have been given a delivery manifest
24 which lists all the deliveries loaded on his truck,
25 and then he would be given a delivery receipt,

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1 proof of delivery made for each delivery.

2 Q. Does he have any tracking system that he's carrying
3 to show what's been delivered, what hasn't been
4 delivered, signatures, that sort of thing?

5 MR. SPOLYAR: Object to the form of
6 the question as vague. Go ahead.

7 A. Not to my knowledge.

8 Q. So he's given -- the truck is loaded up, he's given
9 a list, he's got documentation with him; and then
10 is there anything else he needs to do before he
11 starts making deliveries?

12 A. No.

13 Q. Then he goes about his way and does deliveries?

14 A. That's correct.

15 Q. If there are any issues that he has with respect to
16 the ability to make deliveries, is there someone he
17 contacts at the terminal?

18 MR. SPOLYAR: Objection:
19 Speculation.

20 A. If he had an issue completing a delivery, he
21 would contact the dispatch office at the terminal.

22 Q. And they would -- he would wait for further
23 instruction or?

24 MR. SPOLYAR: Objection:
25 mischaracterization and speculation. Go ahead.

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1 A. Yeah.

2 Q. Yeah, okay. Once his -- strike that.

3 Are there -- what are the nature of the
4 deliveries that have to be made, and I'll explain a
5 little bit further? Is it simply offloading
6 something from the truck? Is it offloading and
7 setting up? What type of work goes into making
8 deliveries?

9 A. Generally, working in an environment with GCC,
10 it would be offloading, what's typically called
11 curbside delivery, put it in your driveway, a
12 pallet in a driveway. Occasionally a customer
13 requests additional services to go inside the house
14 for debris removal. Those are rare, but they do
15 happen.

16 Q. Would GCC Moving be eligible for some type of
17 compensation?

18 A. In Attachment A, it's outlined for those
19 services. He gets compensated.

20 Q. Are there also pickups to be made or not so much?

21 A. Sometimes already tendered pickups, the
22 terminal will make a request that they do a pickup.
23 They can choose to do it or not do it.

24 Q. The documentation that GCC Moving would be
25 providing in terms of making deliveries, I don't

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1 have an example of one, what type of information
2 does it include? I mean, I'm sure it has location
3 of delivery, maybe a point of contact, maybe what
4 the item is? Is there anything else?

5 A. Typically, deliveries have the address,
6 customer's name, or consignee's name, phone number,
7 any special instructions that have been purchased
8 should be on there.

9 Q. Is that paperwork on -- is it on a Big E form? Is
10 it on a GCC Moving form, or is it on an Estes
11 Express form?

12 MR. SPOLYAR: Object to form, lack
13 of foundation. Go ahead.

14 A. It's an Estes Express form.

15 Q. It says neither GCC Moving nor Big E, just Estes
16 Express?

17 A. That's correct.

18 Q. Is there contact information on the form? If a
19 customer were subpoenaed, a co-signee wanted to
20 contact the delivery, or delivery company?

21 MR. SPOLYAR: Objection: vague. Go
22 ahead.

23 A. There's a customer service phone number on the
24 form.

25 Q. Where is that customer service phone number go to?

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1 A. I don't know.

2 Q. You call that phone number and you don't know who
3 you get. Is it an Estes Express phone number?

4 A. It is.

5 Q. Is there any other type of, other than the form,
6 any other tracking device that's required for use
7 in terms of making sure deliveries get to where
8 they need to?

9 A. No.

10 Q. And we are talking about a box truck, so there's no
11 onboard recorder, correct?

12 A. That's correct.

13 Q. Once all the deliveries are made and it's the end
14 of the day or whatever, what happens next?

15 MR. SPOLYAR: Objection:
16 speculation. Go ahead.

17 A. If everything has been delivered and there's
18 nothing left on the truck, he's done for the day.
19 If he has -- if something didn't deliver, he has to
20 take that back to the terminal.

21 Q. If he's done for the day, is there any type of
22 paperwork that he has to drop off at the terminal?

23 A. He can drop it off that day or the next
24 morning.

25 Q. Is he dropping it off to dispatch, or is he

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1 dropping it off to Mike Rail, or?

2 A. He's dropping it off to, usually the dock
3 supervisor.

4 Q. The dock supervisor at Big E, is that a contractor
5 or an employee?

6 A. He's an Estes employee.

7 Q. If he's done for the day, it's his equipment, he
8 can just take the truck home, and he's done until
9 he gets called again?

10 A. That's correct, but, when he's assigned a
11 terminal they show up every day.

12 Q. Okay, all right. When GCC Moving had secondary
13 drivers, would GCC Moving then direct the secondary
14 drivers to go to the terminal and make the
15 deliveries and so forth?

16 MR. SPOLYAR: Foundation:
17 speculation, go ahead.

18 A. Yes.

19 Q. Would the secondary drivers be receiving
20 assignments through GCC Moving, or would the
21 secondary drivers be receiving assignments in the
22 same manner GCC Moving was, where when they show
23 up, get the paperwork, get their trucks loaded and
24 then move on?

25 MR. SPOLYAR: Vague, speculation.

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1 Go ahead.

2 A. The location for them to work, they get from
3 GCC Terminal. Once they arrive at the terminal,
4 the terminal dispatch would share with them
5 whatever deliveries they are making.

6 Q. They would, correct me if I'm wrong, they would get
7 told by GCC Moving, show up to the terminal and
8 then after that it's kind of the same interaction
9 between the secondary drivers and the terminal that
10 GCC Moving would otherwise have; is that fair?

11 A. The specific work that the terminal would like
12 for them to do would be shown to that driver, the
13 same way as we talked about before. However, GCC
14 Moving would tell the driver whether or not to -- I
15 mean, he controlled his driver. You could tell
16 them if the driver didn't want to do the delivery,
17 he would have to call GCC trucking.

18 Q. If GCC Moving wanted a day off, what would he do?
19 Would he inform dispatch, or would he just not show
20 up? How would he exercise a day off?

21 MR. SPOLYAR: Object to the form of
22 the questioning as requiring speculation and to
23 clarify, it's vague. The scenario you're
24 describing is one where Gary Cook was driving?

25 MR. SHAW: Where Gary Cook was

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1 vehicles, and whether Big E paid for the branding
2 or whether branding was paid for by the Plaintiff
3 and/or recruited drivers."

4 After objection you answered, "Big E
5 states it does not require any branding of
6 vehicles."

7 My question to you is: Is that contrary
8 to Section 15B of the agreement of the contract?

9 MR. SPOLYAR: Object to the form of
10 the question as vague. As to the term "branding,"
11 it requires a legal conclusion with respect to the
12 contract. Which contract exhibit are we talking
13 about?

14 MR. SHAW: Let's look at the 2015
15 agreement.

16 MR. SPOLYAR: That's No. 2.

17 MR. SHAW: Number 2.

18 A. So, okay I got both documents, what's the
19 question again, please?

20 Q. The interrogatory speaks to the nature and extent
21 of branding of vehicles. It would appear that
22 Section 15B requires a similar type of branding,
23 albeit, cloaked in or specified as identification
24 of equipment.

25 My question is: Your answer says, "Big E

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1 states it does not require any branding of
2 vehicles." Doesn't Section 15B of the contract
3 require branding?

4 MR. SPOLYAR: Same objection: vague
5 as to branding, and legal conclusion as to
6 interpretation of the contract. Go ahead.

7 A. I would say, no, they don't. Branding to me
8 means advertising, you know, or something like
9 that. Identification is a federal requirement to
10 have the truck legally owned. I don't think they
11 are the same.

12 Q. That's the clarification I'm looking for. It's
13 your testimony that branding is different than
14 identification as required under the contract?

15 A. Yes.

16 Q. Section 15, under the contract, does it require a
17 decal, an Estes logo decal be placed on the
18 equipment?

19 A. No.

20 Q. I thought it was your testimony earlier that an
21 Estes Express decal was placed on the vehicles?

22 MR. SPOLYAR: Object to the form of
23 the question. Go ahead.

24 A. No.

25 Q. The type of identification required under 15B of

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1 the contract includes what?

2 A. The federal regulation requires the name of
3 the company, whose operating authority is being
4 used, as well as their federally issued DOT number.

5 Q. Is that information typically stenciled on in some
6 manner, or how is it placed on the vehicle?

7 A. Typically, it's a decal.

8 Q. Okay, all right. And the name of the operating
9 authority under this contract would be who?

10 A. Big E Transportation.

11 MR. SPOLYAR: I want to go back and
12 make sure we're clear. We are talking about
13 Exhibit 2 in the 2015 contract?

14 MR. SHAW: Yes.

15 MR. SPOLYAR: Oh.

16 A. It's a good point, Exhibit 2, he was running
17 on his own authority.

18 Q. Okay.

19 A. So, when we signed the new contract in 2015,
20 that would have been GCC Moving on the truck and
21 their DOT number.

22 Q. His DOT number, his authority? In 2012, it would
23 have been?

24 A. Big E Transportation.

25 Q. Big E Transportation, okay. In both situations,

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1 that identification is done at the contractor's
2 expense; is that correct?

3 A. Yes.

4 MR. SPOLYAR: Object to the form of
5 the question, requiring a legal conclusion. Go
6 ahead.

7 A. That's correct.

8 Q. Okay. So --

9 A. As per Exhibit 3.

10 Q. Exhibit 3 being the 2000 --

11 A. If it's -- it's the contractor's expense
12 anyway.

13 Q. That's what I was getting at is whether the
14 contractor is operating under its own authority or
15 Big E's authority. The identification is done at
16 the contractor's expense?

17 A. That's correct.

18 Q. Just for point of clarification, Interrogatory
19 No. 16 on Page 11, carrying over to Page 12, the
20 interrogatory asks to "identify with specificity
21 whether Big E provided Plaintiff and/or recruited
22 drivers. Big E, Estes, or other corporate
23 identification, uniforms, and/or unique employee
24 numbers from 2008 to the present." Further asked
25 to "identify the nature of the identification

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1 provided and the purposes for which it was
2 provided."

3 After a series of objections you state
4 that "Big E does not assign drivers employee
5 numbers, but contractors are provided unique
6 numbers in order to connect delivery manifests to
7 contract through customer requirements."

8 My question to you is: What type of
9 identifiers do employees have versus any type of
10 similar identifier for contractors?

11 MR. SPOLYAR: Object to the form of
12 the question as vague. Go ahead.

13 A. Employees have employee numbers issued by the
14 company.

15 Q. Payroll or something?

16 A. For payroll and things like that. Contractors
17 are issued a number in the routing system to
18 identify who actually made the deliveries. Without
19 that number we wouldn't know what contractor did
20 the work.

21 Q. Every contractor has their own number?

22 A. Uh-huh.

23 Q. Going down to Interrogatory 18: "Identify with
24 specificity any vetting, investigation, or
25 interviewing process or any procedure established

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1 by Big E with respect to an employee hired by
2 Plaintiff and/or recruiting drivers from 2011 to
3 the present."

4 After a series of objections, Big E
5 states it "performs background checks with drivers
6 in accordance with the FMCSR."

7 We've already discussed the acronym. My
8 question is: What are the background checks
9 performed by Big E on drivers, and then I'll have a
10 follow-up question?

11 A. If they are operating under Big E's operating
12 authority, we have to do the previous employment
13 background check to verify whether or not they've
14 ever had a positive drug or alcohol test. That's a
15 federal requirement, and when they are under their
16 own authority, we don't do that.

17 Q. Now, what type of background checks does Big E
18 perform for secondary drivers if the contract
19 driver is operating under Big E's authority, or
20 does that situation not occur?

21 MR. SPOLYAR: Object to the form of
22 that question as vague. Go ahead.

23 A. Some customers require a criminal background
24 check before drivers can be there. Based on that
25 customer's requirements, we would run that

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1 background check.

2 Q. That could be secondary drivers?

3 A. That's correct.

4 Q. In terms of background checks for secondary drivers
5 operating under a contractor's own authority, who
6 would perform the background check?

7 A. If they operated under the contractor's own
8 authority, we don't do background checks.

9 Q. Would that be up to the contractor?

10 A. It's up to the contractor, that's correct.

11 Q. Interrogatory No. 19, I'm not -- strike that.

12 It's not so much with the substance of
13 the response, but it does make reference to
14 settlement deductions. Again, that's not a term
15 I'm familiar with, I was wondering if you could
16 explain that?

17 A. Did you say 19?

18 Q. Yes. Next to -- there's a line in the answer that
19 says, "Plaintiffs paid for the costs of
20 registration of permit fees through settlement
21 deductions."

22 My question to you is: Could you
23 describe what settlement deductions are and how
24 that relates to compensation and the like?

25 A. There is a -- in the contract there is a table

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1 listing all the items that the contractor can pay
2 for via a settlement deduction.

3 Q. That's what Section 5, 4?

4 A. Section 5.

5 Q. Okay.

6 A. That's what that refers to.

7 Q. Okay. And we've discussed this before, but, just
8 for clarity, and this is sought in Interrogatory
9 21, with respect to compensation of secondary
10 drivers, of contractors, is compensation -- in
11 terms of compensation, between the primary
12 contractor and the secondary driver, or does Big E
13 get involved in that?

14 A. Big E has nothing to do with it. It's between
15 the contractor and his drivers.

16 Q. Okay. Why is that?

17 A. Because they are not Big E's employees, Big E
18 doesn't have a relationship with those drivers.

19 Q. But they ultimately perform a service on behalf of
20 Big E?

21 MR. SPOYLAR: Object to the form of
22 the question as vague and lacking foundation. Go
23 ahead.

24 A. Big E contracts with the contractor to perform
25 a service. He hires his own employees to fulfill

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1 that contract, it's up to him what he pays them.

2 Q. Does -- is there any type of -- strike that.

3 With respect to secondary drivers, is
4 there any amount of vetting that Big E has in
5 hiring them?

6 MR. SPOLYAR: Objection: Vague. Go
7 ahead.

8 A. Under Big E's operating -- if they are
9 operating a truck with Big E's operating authority
10 on it, we have to do -- Big E does what's required
11 by the Federal Motor Carrier Safety Inspection.

12 Q. For the most part, the contractor can hire whomever
13 he or she wants as a secondary driver?

14 A. That's correct.

15 Q. I think you testified earlier, correct me if I'm
16 wrong, that there are no employee drivers in the
17 Seekonk terminal?

18 A. No, I didn't.

19 Q. You didn't, okay. Okay. Are there employee
20 drivers in the Seekonk terminal?

21 MR. SPOLYAR: Objection to the form
22 of the question, implying real conclusion and
23 vetting, vague. Go ahead.

24 A. Estes Express Lines has employees out in
25 Seekonk terminals.

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1 drivers to do time, things that take more time,
2 residential-type deliveries, where they are on
3 small roads and neighborhoods because Estes
4 employee drivers drive tractor trailers.

5 Q. So it's a scope-of-work-type issue?

6 A. Uh-huh.

7 Q. So is it -- well, no, I don't want to -- I don't
8 want to put words in your mouth, but, it sounds
9 like Big E contract drivers may not own rigs and
10 trailers as their equipment, they own smaller
11 vehicles?

12 MR. SPOLYAR: Object to the form as
13 vague. Go ahead.

14 A. Contractors that work on the terminal accounts
15 typically own smaller vehicles.

16 Q. Chris Seng, what type of vehicle does he own?

17 A. Box truck.

18 Q. What about Marco?

19 A. Box truck.

20 Q. The contract -- 2015 contract was eventually
21 terminated, the contract with GCC Moving; is that
22 correct?

23 A. That's correct.

24 Q. Do you know why it was terminated?

25 A. The amount of freight available had dropped

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1 off to the point where we didn't need as many
2 trucks or Estes hadn't requested some trucks.

3 Q. Was GCC Moving provided notice, and if so, how
4 much?

5 A. I don't know.

6 Q. Who would know that?

7 A. Keith Davis would know that.

8 Q. Is Keith Davis the one who terminated the contract?

9 A. I don't know, but most likely.

10 Q. At the time the contract was terminated, do you
11 know how many secondary drivers GCC Moving had
12 working for them?

13 A. I don't know.

14 Q. Do you know what happened to those drivers when the
15 contract was terminated?

16 MR. SPOLYAR: Objection: lacks
17 foundation. Go ahead.

18 A. I don't know.

19 MR. SHAW: All right. Jim that's
20 all I have.

21 MR. SPOLYAR: I have a couple of
22 questions.

23 EXAMINATION BY MR. SPOLYAR

24 Q. Steve, can you pull out Exhibits 2 and 3, please.

25 A. Okay.

C E R T I F I C A T E

I, PATRICIA QUIRK, a Notary Public in and for the State of Rhode Island and the Commonwealth of Massachusetts, do hereby certify that I am expressly approved as a person qualified and authorized to take depositions pursuant to rules of Civil Procedure of this Court, especially but without restriction thereto, under Rules 29 and 30(b)(4) of said Rules; that the witness was first sworn by me; that the transcript contains a true record of the proceedings.

Reading and signing of the transcript was not requested by the deponent or any parties involved upon completion of the deposition.

IN WITNESS WHEREOF, I have hereunto set my hand
this day of _____, 2017

PATRICIA QUIRK, CSR
NOTARY PUBLIC/CERTIFIED COURT REPORTER
MY COMMISSION EXPIRES 12/11/2017

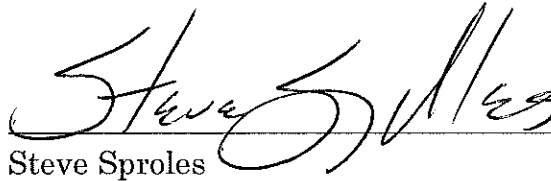
CORRECTION SHEET/ERRATA SHEET

Case Name: GCC Moving, LLC and GARY COOK d/b/a GCC Moving v.
ESTES EXPRESS LINES, CORP. d/b/a, alias, BIG E
TRANS
Date of Deposition: August 16, 2017
Deponent: Steve Sproles

I, Steve Sproles, do hereby certify that I have read the foregoing statement and that, to the best of my knowledge, said statement is true and accurate (with the exception of the following changes listed below:

<u>Pg. No.</u>	<u>Line No.</u>	<u>CHANGE TESTIMONY TO READ AS FOLLOWS:</u>
12	12	"find" should be "moves"
32	20	"FMC" should be "FMCSA"
58	11	"FMC" should be "FMCSA"
115	11	"Inspection" should be "Administration"

Dated: 10/30/17


Steve Sproles